

DECEMBER 2014

Reports concerning local government, valuation of land, compensation, town planning, environmental control and powers and duties of statutory authorities from the High Court, Federal Court, Supreme Courts of the States and Territories and the Victorian Civil and Administrative Tribunal.

The Authorised reports of the NSW Land and Environment Court

THE
LOCAL
GOVERNMENT
AND
ENVIRONMENTAL
REPORTS
OF AUSTRALIA
2014

EDITOR

SA WHITE, MA LLB

REPORTERS

J VENEZIANO

J WILSON

VOL 204 — PART 2

PAGES 119-237

The mode of citation of this part will be:
204 LGERA

TABLE OF CASES REPORTED

Part 2 — Pages 119-237

Adelaide, City of, Corporation of v BFR Pty Ltd (SA Env, Res & Dev Ct)	183
BFR Pty Ltd; Corporation of the City of Adelaide v (SA Env, Res & Dev Ct)	183
Canterbury City Council (No 2); Hrsto v (NSW Land & Environment Ct)	148
Crown Lands Act, Minister Administering (Newcastle Post Office Claim); New South Wales Aboriginal Land Council v (NSW Land & Environment Ct)	1
Crown Lands Act, Minister Administering; New South Wales Aboriginal Land Council v (NSW Land & Environment Ct)	205
Davis v Gosford City Council (NSW Ct of App)	71
Dobson; Gold Coast City Council v (Qld Land Appeal Ct)	160
Gaetjens v Corporation of the City of Unley (SA Env, Res & Dev Ct)	44
Gold Coast City Council v Dobson (Qld Land Appeal Ct)	160
Gosford City Council; Davis v (NSW Ct of App)	71
Gurney v Hobart City Council (Tas Sup Ct)	101
Hobart City Council; Gurney v (Tas Sup Ct)	101
Hrsto v Canterbury City Council (No 2) (NSW Land & Environment Ct)	148
Marion (No 3), City of; Paior v (SA Env, Res & Dev Ct)	56
New South Wales Aboriginal Land Council v Minister Administering Crown Lands Act (Newcastle Post Office Claim) (NSW Land & Environment Ct)	1
New South Wales Aboriginal Land Council v Minister Administering Crown Lands Act (NSW Land & Environment Ct)	205
Paior v City of Marion (No 3) (SA Env, Res & Dev Ct)	56

(Cases in **bold** reported in this part)



THOMSON REUTERS

© 2014 Thomson Reuters (Professional) Australia Limited

Lawbook Co.

ABN 64 058 914 668

Published in Sydney

ISSN 1039-7213

TABLE OF CASES REPORTED

Port Adelaide Enfield, City of; Port Adelaide Residents Environment Protection Group v (SA Env, Res & Dev Ct)	119
Port Adelaide Residents Environment Protection Group v City of Port Adelaide Enfield (SA Env, Res & Dev Ct)	119
South Australian Potato Company Pty Ltd v Minister for Sustainability, Environment and Conservation (No 2) (SA Env, Res & Dev Ct)	228
Sustainability, Environment and Conservation, Minister for (No 2); South Australian Potato Company Pty Ltd v (SA Env, Res & Dev Ct)	228
Unley, City of, Corporation of; Gaetjens v (SA Env, Res & Dev Ct)	44

(Cases in **bold** reported in this part)

INDEX

Part 2 — Pages 119-237

ABORIGINALS

- Land — Claimable Crown lands — Land vested in Minister for Public Works — Title to land later subject to Crown lands conversion process — State of New South Wales named as registered proprietor — Refusal of claim — Whether lands claimable Crown lands under statutory definition — Public Works Act 1888 (NSW) — Land and Environment Court Act 1979 (NSW) — Aboriginal Land Rights Act 1983 (NSW), s 36(2) — Real Property Act 1900 (NSW), ss 40, 42.
- New South Wales Aboriginal Land Council v Minister Administering Crown Lands Act (NSW Land & Environment Ct)* 205

ACQUISITION OF LAND

- Compulsory acquisition — Compensation — Assessment — Part of parcel of land acquired — Land had potential for development for mix of residential and non-residential purposes prior to resumption — Gold Coast Planning Scheme (Qld).
- Gold Coast City Council v Dobson (Qld Land Appeal Ct)* 160

ADMINISTRATIVE LAW

- Appeals from administrative bodies — Jurisdiction — Merits of Minister's decision to act within power and to undertake variation of water allocation under water licences — Natural Resources Management Act 2004 (SA), ss 3, 79, 81, 146, 152, 156, 202, 204.
- South Australian Potato Company Pty Ltd and Another v Minister for Sustainability, Environment and Conservation (No 2) (SA Env, Res & Dev Ct)* 228

DEVELOPMENT

- Categorisation of use — Mixed use development comprising 224 residential apartments, communal facilities, basement car parking, and some ground floor retail/commercial spaces alongside some residential apartments — Proposed development predominantly residential with small number of retail and commercial tenancies — “Residential accommodation” prohibited — “Shop top housing” permitted with consent — Canterbury Local Environmental Plan 2012 (NSW).
- Hrsto and Another v Canterbury City Council (No 2) (NSW Land & Environment Ct)* 148

INDEX

DEVELOPMENT CONSENT

- Validity — Consent for integrated use shop and service station complex with ancillary vehicle/dog wash bays, signage, fencing, car parking and landscaping — Failure of council to comply with time limits for public notification of development proposal and for hearing of representations — Whether failure to comply with statutory requirements to give the requisite notices within prescribed time should be excused — Whether council's decision should be confirmed — Development Act 1993 (SA), ss 35, 38 — Environment, Resources and Development Court Act 1993 (SA), s 33 — Development Regulations 2008 (SA), regs 33, 35, 37.
Port Adelaide Residents Environment Protection Group v City of Port Adelaide Enfield and Another (SA Env, Res & Dev Ct) 119

LAND AND ENVIRONMENT COURT (NSW)

- Jurisdiction — Judgment — Court hearing claim for Crown lands — Court assisted by commissioner — Acting commissioner ceasing to hold appointment after hearing but before judgment — Whether judgment still able to be delivered — Land and Environment Court Act 1979 (NSW).
New South Wales Aboriginal Land Council v Minister Administering Crown Lands Act (NSW Land & Environment Ct) 205

PRACTICE AND PROCEDURE

- Judicial review — General principles — Failure to give reasons for decision — Adequacy of reasons — Acquisition of Land Act 1967 (Qld).
Gold Coast City Council v Dobson (Qld Land Appeal Ct) 160
- Jurisdiction — Judgment — Court hearing claim for Crown lands — Court assisted by commissioner — Acting commissioner ceasing to hold appointment after hearing but before judgment — Whether judgment still able to be delivered — Land and Environment Court Act 1979 (NSW).
New South Wales Aboriginal Land Council v Minister Administering Crown Lands Act (NSW Land & Environment Ct) 205

PROSECUTION

- Offence — Complaint that development undertaken without approval — Tree-damaging activity — Whether work undertaken either “maintenance pruning” or “pruning” to remove branches that posed material risk to persons — Onus of proving or disproving exclusions under definition of “tree-damaging activity” — Development Act 1993 (SA), ss 4, 32, 44(1), 105(3) — Environment, Resources and Development Court Act 1993 (SA), s 7(3a) — Developments Regulations 2008 (SA), reg 6A(8)(a), 6A(8)(b) — Summary Procedure Act 1921 (SA), s 56.
Corporation of the City of Adelaide v BFR Pty Ltd and Another (SA Env, Res & Dev Ct) 183

INDEX

WATER

- Licence — Appeals from administrative bodies — Jurisdiction — Merits of Minister's decision to act within power and to undertake variation of water allocation under water licences — Natural Resources Management Act 2004 (SA), ss 3, 79, 81, 146, 152, 156, 202, 204.
South Australian Potato Company Pty Ltd and Another v Minister for Sustainability, Environment and Conservation (No 2) (SA Env, Res & Dev Ct) 228

WORDS AND PHRASES

- “Claimable Crown lands” — Aboriginal Land Rights Act 1983 (NSW), s 36(2).
New South Wales Aboriginal Land Council v Minister Administering Crown Lands Act (NSW Land & Environment Ct) 205
- “Shop top housing” permitted with consent” — Canterbury Local Environmental Plan 2012 (NSW).
Hrsto and Another v Canterbury City Council (No 2) (NSW Land & Environment Ct) 148
- “Tree-damaging activity” — Development Act 1993 (SA), ss 4, 32, 44(1), 105(3) — Developments Regulations 2008 (SA), reg 6A(8)(a), 6A(8)(b).
Corporation of the City of Adelaide v BFR Pty Ltd and Another (SA Env, Res & Dev Ct) 183